

# On The Docket

Volume 6, Issue 1

January, February,  
March, April 2004

Kristen E. Batty, Editor

## The Inner Workings: News & Advice

By: Susan M. Thurston, Clerk of Court

Welcome to the 2004 edition of *On the Docket*! During the year long conversion to our new case management - electronic filing system, CM/ECF, we took a brief hiatus from production of the newsletter in order to concentrate our collective efforts on training attorneys on the use of the new system. We now have over 80 registered users of CM/ECF, and this number is increasing weekly as we train additional debtor attorneys, creditor attorneys and creditor filers. If you haven't yet attended one of our monthly orientation sessions, I strongly encourage you to do so. Sessions are held the third Wednesday of every month from 2:00 to 3:30 pm in the Bankruptcy Courtroom, and are an excellent opportunity to learn how the new system will enhance your law practice; reduce operating costs and generally make the administration of your bankruptcy work more efficient. A demonstration of the new system is given as well as a review of the court's general order, operating procedures and training requirements for becoming a registered user of the system. No pre-registration is required — just come to the courtroom to listen and learn!



For those now ready to begin electronic filing — please download the training registration forms from our website and submit to Kristen Batty, ECF Training Coordinator, to schedule your class.

Other exciting news at the court includes the installation of a state of the art sound system in the courtroom. This new system, which was installed the week of April 26<sup>th</sup>, will greatly enhance the clarity and recording of court proceedings and will ensure that all those who appear before the court are clearly heard! In addition, efforts are underway to spruce up the library and attorney conference room, as well as to lower the height of the podium to allow for better visibility throughout the courtroom.

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### Inside this issue:

<i>News &amp; Advice</i>	1,2
<i>Team Coach</i>	2,3
<i>Power of the Human Mind</i>	3
<i>Message from Quality Assurance Team</i>	4
<i>Important CM/ECF Note</i>	4
<i>Look Who's Electronically Filing</i>	5
<i>Recent Court Decisions</i>	6,7
<i>NCBC Annual Conference</i>	8
<i>Installation of New Sound System in the Courtroom</i>	8
<i>2004 Local Rule Book Order Form</i>	9
<i>2004 Customer Service Survey</i>	10

*(News & Advice cont. from page 1)*

The 2004 edition of the Bankruptcy Court Local Rules book has just been released and is available for immediate purchase. This edition includes all of the recent amendments to the local bankruptcy rules, as well as local form revisions and the latest ECF General Order. A copy of the order form is included on page 9 of this newsletter.



Finally, the court is thrilled to announce that we have been selected as the host court for the 2006 conference of the National Conference of Bankruptcy Clerks (NCBC), to be held in Newport, Rhode Island, August 28-September 1, 2006 at the Hyatt Regency Hotel. This will be the first time that the Rhode Island Bankruptcy Court has hosted this prestigious conference and is expected to be attended by several hundred bankruptcy court staff, clerks of court, attorneys and trustees from throughout the United States, all joining together to participate in a variety of educational programs and forums geared toward improving the bankruptcy court system. Stay tuned for more information on this exciting event in the coming year.

## Team Coach

*By: Cindy Cory, Courtroom Deputy*

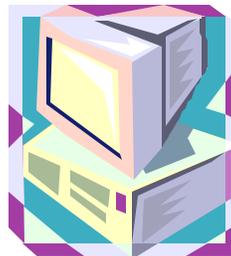
This has been an exciting and busy year for the Clerk's Office and its customers. As we work together to adjust to our new technology and the changes that accompany it, here are a few helpful hints to make our collective lives easier.

1. The old method of amending schedules was done by filing a motion to amend. The new procedure is to file "Amended Schedules" - D, E and F, with the \$26.00 fee, no motion required. The filer of amended D, E and F schedules is required to serve the added creditors with a copy of the first meeting notice. All other amended schedules are filed separately as "Amended Schedules" with service to the Trustee and US Trustee. **All amended schedules must now be signed by the debtor(s).** As always the change that caused the amendment must be underlined and *italicized*.

2. Privacy Act: Remember to redact the first 5 digits of the Social Security Number on the first

page of the petition, and make sure the number does not appear on any other pages. On Schedule F, account numbers need only have the last 4 digits appear. The Clerk's Office takes no action if the full account number is disclosed.

3. For our Electronic Filers (and we hope everyone will be in this category soon), be careful when filing pleadings to use the appropriate Bankruptcy or Adversary category, depending on the type of case. A motion filed in an Adversary case using the Bankruptcy module will not have the properly-captioned forms attached when it is time to enter an order. Also, remember to scroll through the applicable choices, particularly in the motion category. Do not select Generic when there is



*(Continued on page 3)*

*(Team Coach cont. from page 2)*

a motion category that fits your pleading (Motion for Summary Judgment) as again, there will be problems acting on the pleading. Tip: when linking pleadings, it is helpful to highlight all the choices under "Select category to which your event relates" - order, plan, cmp, misc, etc. and then all pleadings appear for you to choose when linking. A plan, for instance, may be found by choosing plan; but can also be caseupld, depending on how it was filed.

4. If you are e-filing a pleading that affects a case on the calendar or contains a pleading of an **emergency** nature, please call Cindy at x32 or contact the assigned case manager immediately.

5. Signatures: Remember the correct e-filing signature is /s/ John J. Doe. Notice that the 'Name' of the signatory must be typed on the same line following the /s/. Include your name and address information under the signature line (e-mail addresses also if you wish to be contacted by e-mail).

6. Attorneys are reminded once again to put case numbers and names on pleadings, especially amended schedules. The Clerk's office is not re-

sponsible for ensuring numbers and case names appear on pleadings.

7. Daily calendars are posted on the Web Page and are updated as changes dictate (which is often). Also posted is the list of calendar dates to be used in the future. This list is periodically updated as the Court's schedule changes. By posting it, we hope to give you some flexibility in planning your time.

8. When filing a stipulation, proposed consent order, or any pleading in which other parties have signed the pleading, please be sure to select **ALL** the party filers. To do this, highlight your party then press the **control key** and click on the other appropriate parties. This allows you to select more than 1 party filer.

If you have any questions while filing, call our help desk at extension 14 or the assigned case manager. We are all committed to making e-filing as efficient and easy as possible.



## The Power of the Human Mind

According to research conducted at Cambridge University, it doesn't matter in what order the letters in a word are typed, the only important thing is that the first and last letter be in the right order. The rest can be a total mess and you can still read it without problem. This is because the human mind does not read every letter by itself, but the word as a whole. Amazing huh?

Source: [www.gmashrm.org](http://www.gmashrm.org) January 2004 newsletter



## Message from the Quality Assurance Team . . .

We, at the Bankruptcy Court, appreciate all of our E-Filer's efforts with our new Case Management System (CM/ECF). Our 82 E-Filers make up about forty percent of our filings. Since 1/1/04 we have had to terminate 140 electronically filed documents and docket 83 ECF Corrective entries due to one or more of the following errors (listed in order of frequency):

- Incorrect /s/ -the Name **MUST** be typed **NEXT** to the /s/*
- Linkage is incorrect*
- Incorrect Party Filer information (to select multiple filers, hold the control key down while selecting.)*
- Debtors' names in all caps or entered in the incorrect fields*
- Attaching pleadings/petitions with social security/account numbers listed*
- Incorrect attachment (pdf) to event*
- Incorrect event used*
- No /s/ on amended schedules*
- Creditor address is not being taken out of event when filing a Notice of Appearance*
- Uploading entire petition when filing missing documents*
- Filing Adversary events in the Bankruptcy category*
- Using the Motion to Amend event instead of the Amended Schedules event*
- Not using the **AMENDED** event to re-file pleadings that need to be amended*
- Duplicate entries*
- Rhode Island should not be spelled out when uploading petitions, just enter RI*



Although there are more, these are the most common errors that we come across. Again, we do appreciate your efforts and we're here to help with any of your questions or concerns. If you're unsure of something please take advantage of our Knowledge Base (located on our website under CM/ECF Local Support). If the information you need is not there, please call our Help Desk at 528-4477 extension 14.

## Important CM/ECF Note:

It is HIGHLY recommended that all registered users **Bookmark** in their browser (i.e., save as a favorite) the web address for cm/ecf. The web address to access the cm/ecf system is : **<https://ecf.rib.uscourts.gov/>**

Registered users who routinely access CM/ECF through our external website may not be able to file documents *IF* our website is unavailable. In order to continue filing, we recommend all users to make sure they know the address of cm/ecf or bookmark the page.

Instructions for bookmarking in Netscape ---open the Netscape browser, go to <https://ecf.rib.uscourts.gov/>, click on the bookmark menu at the top of the browser and click on bookmark this page.

Instructions for bookmarking in Internet Explorer---open the Internet Explorer browser, go to <https://ecf.rib.uscourts.gov/>, click on the favorites menu at the top of the browser and click on add to favorites.

NOTE: We also advise you to print the cm/ecf web address and add the information to your manual since computers are often replaced and important bookmarks may be lost. Having a hard copy of this information is recommended!

If you have any questions or comments, please email us at [rib\\_helpdesk@rib.uscourts.gov](mailto:rib_helpdesk@rib.uscourts.gov) or call us at 401-528-4477.

## Look Who's Electronically Filing!

*By: Gail Kelleher, Chief Deputy Clerk*

With a CMECF login and password, these attorneys can file pleadings from a personal computer - any time, any place! Do you know what they're not doing? Paying for couriers, traveling to Providence and paying to park, getting through building security, waiting in line at the counter, and scrambling to make the 4:30 filing deadline. Sound Good? You too can be among the happy electronic filers. Training classes are scheduled for May 21 (Debtor Atty. Class), June 9 (Creditor Atty. Class), June 25 (Debtor Atty. Class). Still not sure? Come to an ECF Orientation class (always the 3<sup>rd</sup> Wednesday of each month from 2:00 - 3:30 p.m.)



Tracy Baran  
 Peter Berman  
 Edward Bertozzi  
 John Boyajian  
 Mark Buckley  
 Thomas Carlotto  
 Michelle Davenport  
 Patricia Davis  
 Robert Davis  
 William Delaney  
 Leonard DePasquale  
 Catherine Eastwood  
 Stacy Ferrara

Peter Furness  
 Lisa Geremia  
 Janet Goldman  
 Andrew Harmon  
 Kevin Heitke  
 Michael Iannotti  
 Peter Iascone  
 Stephen Izzi  
 James Kelleher  
 Lynda Laing  
 Mark Laroche  
 Edward Lawson  
 Christopher Lefebvre

Kevin McKenna  
 Lisa Anne Pinsonneault  
 Charles Pisaturo  
 Jack D. Pitts  
 Thomas Quinn  
 Russell Raskin  
 Gerard Ratigan  
 Alfred Rego, Jr.  
 Andrew Richardson  
 Linda Rekas-Sloan  
 Brian J. Spero  
 Mark G. Sylvia  
 Marc Wallick

### ECF Fact:

Electronic filing commenced at the Rhode Island Bankruptcy Court on October 1, 2003. Since then, electronic filers have been responsible for nearly 10,000 docket entries, including 672 bankruptcy petitions! Currently, e-filers account for approximately 14% of all docket entries in the court's database.

# ECF Orientation scheduled the 3rd Wednesday of each month

## Recent Court Decisions

By: *Jonathan Calianos, Esq., Law Clerk*

Here is a short digest of some noteworthy opinions from the Court. As always, the full text of Court opinions are available at our web site [www.rib.uscourts.gov](http://www.rib.uscourts.gov).

### What is the Standard on a Motion to Re-Open a Chapter 7 case to Add a Creditor?

**The Case:** *In re Eacueo*, 292 B.R. 726 (Bankr. D.R.I. 2003)

**Short Answer:** The Debtor must establish that the failure to add the creditor before the close of the case was the result of excusable neglect and that cause exists to schedule the creditor.

The Debtor was a contractor who was renovating the creditor's home and testified that his relationship with the creditor was good and he had virtually completed the renovation project to the satisfaction of the creditor until he failed to return one phone call to the creditor. This shortcoming, according to the Debtor, caused the creditor to throw him off the job, hold his tools hostage, file criminal assault charges against him, and to pay another contractor to complete the contract. Within days of pleading *nolo contendere* to the criminal assault charge, the Debtor filed a Chapter 7 petition, failing to include the creditor therein. Eight days after the bankruptcy filing, the creditor filed a civil complaint against the Debtor in Superior Court. Despite being served with the summons and complaint, the Debtor failed to amend his petition to include the creditor. The Court found that the Debtor acted in bad faith in not listing the creditor and did not meet the excusable neglect standard as set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1992).

### Can a Debtor Avoid a Judicial Lien on Property She no Longer Owns?

**The Case:** *In re Mailhot*, 301 B.R. 774 (Bankr. D.R.I. 2003)

**Short Answer:** YES, as long as the Debtor had an ownership interest in the property before the lien attached and avoidance of the lien will entitle the Debtor to a state or federal exemption.

In August 1996, the Debtor filed a Chapter 7 bankruptcy listing her home as an asset worth \$90,000, subject to a mortgage of \$73,000 and claiming an exemption of \$90,000. The case proceeded normally, the Debtor was discharged and the case was closed. In March 2003, the Debtor sold her home and the closing attorney discovered two judicial liens. To allow the closing to occur, the attorney held sufficient proceeds in escrow pending a determination of whether the liens were valid. The Debtor filed a motion to reopen her bankruptcy, which was granted, and then she filed motions to avoid the judicial liens. The lien creditors objected on the ground that the Debtor no longer owned the real estate and was therefore without standing to avoid the judicial liens. The Court acknowledged a split of authority on the issue and decided to follow the only Circuit opinion on point from the Ninth Circuit Court of Appeals. The Court held that proper focus is on whether the property in question was "property of the debtor" at the time of the fixing of the lien upon the property.



*(Continued on page 7)*

***(Recent Court Decisions cont. from page 6)*****Can Parochial School Tuition of \$750 per Month be Considered a “Charitable Contribution” Under 11 U.S.C. § 1325(b)(2)(A), and therefore not subject to Court scrutiny?****The Case:** *In re Watson*, 299 B.R. 56 (Bankr. D.R.I. 2003)**Short Answer:** No.

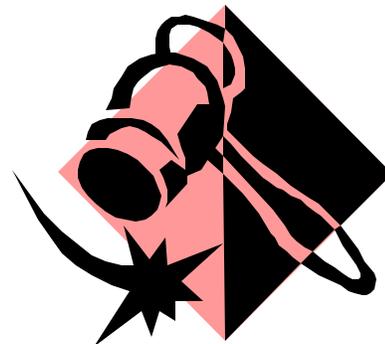
The Debtors filed a joint Chapter 13 petition listing net monthly income of \$5,770, expenses of \$4,194, and \$1,576 in disposable income. The plan provided for thirty-six monthly payments of \$1,576, paying unsecured creditors whose claims exceeded \$123,000, twenty-five cents on the dollar. The Debtors, who were devout Catholics, listed an expense of \$750 per month for their children’s parochial school education, arguing that it should be allowed as it was tantamount to a charitable contribution that was less than 15% of their gross annual income. The Court found that the tuition payments were not a charitable contribution or a gift but rather the purchase of a substantial asset - a private school education for their children. The Court also found that the Debtors provided no basis to show the private education expense was reasonably necessary for the maintenance or support of their children. The Court noted that unlike the cases cited by the Debtors, there was no allegation that the public schools were inadequate or that the children had some special need not being met by public education.

**What Rate of Interest Should Apply to an Oversecured Creditor’s Pre-Petition Arrearage Claim Under a Chapter 13 Plan - the Contract Rate or Some Other Rate ?****The Case:** *In re Gomes*, 298 B.R. 506 (Bankr. D.R.I. 2003)

**Short Answer:** The Court applied the rate paid on United States Treasury Bills without adding a risk premium.

In July 1994, the Debtors bought a home in Lincoln, Rhode Island, and financed the purchase through Chase Manhattan Mortgage Corporation. They executed a promissory note in the original principal amount of \$130,624, with interest of 8.5% per annum, and gave Chase a first mortgage on their home. In October 2002, the Debtors filed a Chapter 13 petition and Chase filed a claim for its pre-petition arrearage of \$14,844. As an oversecured creditor, Chase claimed it was entitled to interest on its arrearage claim at the contract rate of interest contained in the promissory note - 8.5%. The Debtors did not contest that interest was applicable, but argued that a lower rate should apply.

Because the loan was entered into before October 22, 1994, the effective date of the Bankruptcy Reform Act, the prohibition against payment of interest on the arrearage claim contained in 11 U.S.C. § 1322(e) did not apply to this case. Rather, the holding of *Rake v. Wade*, 508 U.S. 464 (1993), controlled, allowing an oversecured creditor to pre-confirmation interest on an arrearage claim, thereby giving the creditor a payment of interest on interest. Because the provision of *Rake* was only intended to compensate the secured creditor for having to wait for its payment, and the Debtors’ home was not a depreciating asset, the Court imposed the interest rate contained in the United States Treasury Bill without any premium for risk as the Creditor had no risk in the transaction.



## National Conference of Bankruptcy Clerks

*By: Joseph Wilkicki, NCBC Site Committee Member*

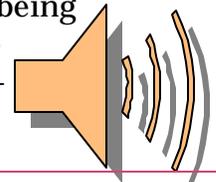
Each year, members of the NCBC (National Conference of Bankruptcy Clerks) meet at a National Conference which provides outstanding educational seminars and motivational speakers which many of us would not be able to experience without the NCBC. The conference also provides an avenue or forum for voicing your concerns and opinions and to get vital information about your profession

In August, 2006, the District of Rhode Island will host the National Conference. The first step in that direction was taken by the site selection committee in choosing the Hyatt Regency Newport as the hotel and convention site. The hotel's location on beautiful Goat Island will provide an inspirational setting for the educational and social aspects of the Conference.

In order to properly manage all the details of a national conference, committees will be needed in the areas of education, hospitality and sponsor support to name but a few. Committee volunteers will be sought in the early Fall, after the 2005 conference in Cincinnati. We will host the best national conference in the history of the NCBC!

### New Sound System in Courtroom . . .

Due to the recent upgrade of the courtroom sound system, you will notice new microphones and speakers. Please be advised that the new microphones are "ULTRA" sensitive. Whether at the attorney tables or in the audience, your conversation will be recorded by the new system. We advise you to leave the courtroom to speak confidentially to your client and/or colleague. There is also a mute feature on the microphone to prevent sound from being broadcast over the loud speakers — you must place your hand over the control button to activate — please see a courtroom clerk to demonstrate.



### New Application Fee for Motion for Admission *PRO HAC VICE*

#### PLEASE TAKE NOTICE:

In accordance with General Order 2003-03 of the United States District Court for the District of Rhode Island dated December 17, 2003, a motion for admission of an attorney *pro hac vice* in the bankruptcy court shall be accompanied by a non-refundable application fee of \$50.00 (check made payable to *The Federal Board Bar Examiner*) for each attorney seeking admission. Such fee shall be paid contemporaneous with the filing of the motion for admission *pro hac vice*.

May 7, 2004

Susan M. Thurston  
Clerk of Court

# UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND LOCAL BANKRUPTCY RULES AND FORMS 2004 EDITION

*LexisNexis is pleased to announce the publication of the 2004 edition of the  
Local Rules for the U.S. Bankruptcy Court, District of Rhode Island.  
This title is published in cooperation with the Bankruptcy Court of the District of  
Rhode Island, and is the official version of the rules in use by the Bankruptcy Court.*

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**We Value Your Feedback: Please turn over to complete the  
2004 CUSTOMER SERVICE SURVEY**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND**

**2004 Employee Recognition Customer Service Survey**

**Customer service and your satisfaction is a primary goal of the Clerk's Office. As we approach the occasion of our Annual Employee Recognition and Awards Ceremony, we are asking you, our valued customers, to assist in the selection process by nominating the employee whose efforts provide exemplary customer service. Please take a few moments to select the employee you believe should be honored with a Customer Service Award. Choose one by circling the name of your choice. After making your selection, please include a brief statement explaining your reasons for your nomination. Your participation in this survey is greatly appreciated.**

<b>NAME</b>	<b>POSITION</b>
AMY G.	LEGAL CASE MANAGEMENT CLERK
ANNE O.	INTAKE CLERK
APRIL E.	FINANCIAL ADMINISTRATOR
CAROLYN S.	CASE ADMINISTRATOR
CHRISTINE L.	CASE ADMINISTRATOR
CINDY C.	COURTROOM DEPUTY CLERK
CRAIG B.	INFORMATION SYSTEMS MANAGER
DEBORAH B.	CASE ADMINISTRATOR
HOLLY D.	CASE ADMINISTRATOR
JENNIFER D.	CASE ADMINISTRATOR
JODY V.	QUALITY ASSURANCE SPECIALIST
JONATHAN C.	LAW CLERK TO JUDGE VOTOLATO
JOSEPH W.	ADMINISTRATIVE OFFICER
KRISTEN B.	HUMAN RESOURCES ADMINISTRATOR
LEAH W.	ADMIN. ASSISTANT TO JUDGE VOTOLATO
LINDA S.	CASE ADMINISTRATOR
MICHELLE M.	DATA QUALITY ADMINISTRATOR
MICHELLE T.	AUTOMATION APPLICATION SPECIALIST
PATRICE M.	INTAKE CLERK
STEVE S.	AUTOMATION SUPPORT SPECIALIST

**PLEASE RETURN THE COMPLETED SURVEY TO THE CLERK'S OFFICE BY:  
JULY 19, 2004**

**U.S. Bankruptcy Court  
380 Westminster Street, 6th Fl.  
Providence, RI 02903  
ATTENTION: GAIL  
Or Fax to: Gail at (401) 528-4470**